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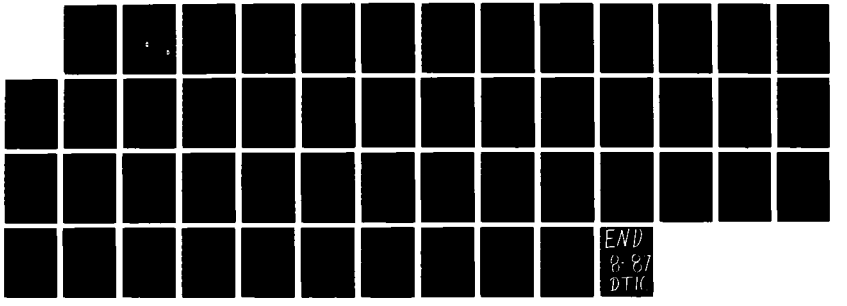

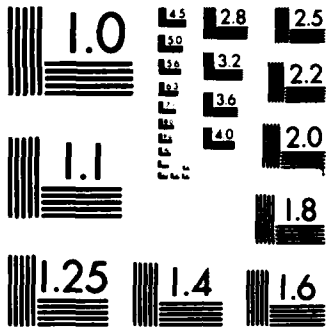

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15 MAY 1987

ACN 87005

THE MILITIA'S ROLE IN NATIONAL DEFENSE: A HISTORICAL PERSPECTIVE

Final Report

The views, opinions, and/or findings contained in this report are those of the author and should not be construed as an official Department of the Army position, policy, or decision, unless so designated by other official documentation.

US ARMY WAR COLLEGE

Major General James E. Thompson, Commandant

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NOTICES

DISCLAIMER

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COMMENTS

Comments pertaining to this study are invited and should be forwarded to: Director, Strategic Studies Institute, US Army War College, Carlisle Barracks, PA 17013-5050.

FOREWORD

This individual study, initiated by the Strategic Studies Institute, makes a systematic review of the historical progression of the militia and its role in defending the nation. While the author, Major Samuel J. Newland, recognizes the state role of the National Guard, the focus of this study is on its national responsibilities and the Congressional power to set standards for the National Guard.

The author concludes that, beginning with the Dick Act of 1903, there has been a gradual extension of Congressional authority over the arming, equipping and training of the National Guard. This trend coincides with the emergence of the United States as a world power and the growth of the US Army and the Army Reserve (after 1908). The extension of Congressional power over the Guard's training is based on constitutional provisions and, given the trends of the last 84 years, Congress is not likely to retreat from its increasingly strong role in setting standards for the Guard.

The author appreciates the assistance provided by LTC Douglas V. Johnson, SSI, Colonel Harold Nelson of the US Army War College, and Professor Edward M. Coffman of the Military History Institute. In addition the author wishes to thank Major Leonid Kondratiuk, Chief of Historical Services at the National Guard Bureau, for his valuable assistance.

Thomas R. Stone

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BIOGRAPHICAL SKETCH OF THE AUTHOR

Major Samuel J. Newland is a Strategic Research Analyst serving at the Strategic Studies Institute. He is a member of the Kansas Army National Guard (KSARNG) and is on a three year tour of duty. He received his Ph.D. in history from the University of Kansas with emphasis in German history since 1870. Prior to his assignment with SSI he was Director of Community Colleges for the State of Kansas, had held staff positions with the 69th Infantry Brigade (M), and was Commander of the 102nd Military History Detachment, KSARNG. He is the author of numerous articles and monographs on National Guard history and German political and military history since 1933.

EXECUTIVE SUMMARY

This report examines the history of national control over the militia and the National Guard's role in the defense of the Nation. Since the earliest periods of U.S. history, the nation has relied heavily on the militia, or National Guard units, for defense. This reliance resulted from a traditional distrust of the professional military and the Nation's Anglo-Saxon roots. With the action of several governors to prevent their guard units from training in Central America, questions have been raised concerning reliance on the state-based militia or National Guard units for national defense purposes.

This individual study produced by the Strategic Studies Institute shows that Congress has had constitutional authority over militia training standards since that document's ratification. Congress did not, however, exert this authority until the 20th century, beginning with the Dick Act of 1903. Since the Dick Act, there has been a gradual and incremental extension of congressional control over the organization, arming and training of the National Guard. A key element in this process was the passage of the 1933 amendments to the 1920 Defense Act. The amendments created the National Guard of the United States, an organization identical to the National Guard of the various states but which served as a nacional reserve component with clear national responsibilities. Given the trend for more congressional authority, seen in a historical perspective, and the current reliance placed on reserve component units, Congress is unlikely to retreat from its increasingly strong role in setting standards for the Guard.

The study provides a brief review of the militia's use in America's wars and highlights the instances in the past where state versus national authority has been an issue. In addition, it provides an accurate and up-to-date summation of the major congressional acts that provide a basis for today's National Guard.

THE MILITIA'S ROLE IN NATIONAL DEFENSE: A HISTORICAL PERSPECTIVE

In the early part of 1986, headlines in the nation's newspapers announced that several Governors objected to the plans of the National Guard Bureau, in concert with the Department of the Army, to send National Guard units to Honduras for their two weeks' annual training. Initially, in the spring of 1986 the press reported that six Governors objected to this policy. Since that time, several state chief executives have changed their views on this policy.[1]

For more than ten years National Guardsmen have routinely trained overseas and in 1986 alone some 29,346 Guardsmen trained in 46 different countries around the world. Recently, however, the objections raised by several governors about training in Central America have not only jeopardized the continuation of this training but caused some to question the role of the Guard in the overall national defense scheme.

The major issue seems to be not overseas training, but training in Central America. It was not until the past two years with proposed training in Central America that major objections were raised by several Governors.[2] The controversy received even more national attention when at the August 1986 Governors' Conference at Hiltonhead, South Carolina, Governors of both parties indicated that they wanted to retain their traditional control of the nonfederalized National Guard and thus be consulted before National Guard units were sent on training missions to Central America.[3]

Even a cursory review of the record indicates that the objections to the Guard's deployment in Central America are only part of a larger issue. The issue is the increasingly bitter debate over the Reagan Administration's

policy in Central America. Despite the passage of nearly two years since the media seized the issue, the number of governors at odds with the President continues to fluctuate. The issue shows no clear signs of diminishing.[4] Of greater significance, however, is the fact that the objections of the Governors is one more chapter in a debate that has simmered since the Constitutional Convention: who controls the Guard (or militia), and what is the Guard's proper role in the defense of the country?

This paper was developed to trace the gradual evolution of the laws and policies that govern the National Guard. It was designed to show how the National Guard is (and has been since the inception of the country) a vital part of the nation's defense system. Finally, and above all, it is intended to place the current controversy on the overseas deployment of the National Guard in an historical perspective, for a clearer understanding of the subject.

The Militia Clause of the Constitution and the subsequent Militia Act of 1792 were developed in the wake of the militia experience in the Revolutionary War. In the course of the American Revolution, the militia, solidly based on the English precedent, had proven the virtue (and some of the vices) of this revered Anglo-Saxon tradition. Clearly the virtue was the fact that the militia system provided large numbers of armed men on short notice. Were it not for the militia system in 1775, there would have scarcely been an American Army.[5] In addition, the bond of the militia to the community from which it was recruited assisted in holding communities in the revolutionary cause.

The American Revolution clearly showed that militia forces could be used for the defense of the country if the militia was a well regulated and disciplined body. When the Revolutionary War was over (and after briefly using the Articles of Confederation as a basis for governing this Nation),

the Constitutional Convention was called in 1787. Among the significant issues which the delegates had to address was a military clause for the new nation.

As the delegates wrestled with the problem of what type of military force should be designed to protect this Nation, at least two major factions emerged: those who wanted a standing or professional army and those who desired to place their trust in some sort of militia. One must remember that the fear or mistrust of a standing army was very real to many people who had lived under the oppressive activities of the British Army during the colonial period. On the other hand, there was some dissatisfaction regarding the militia's performance, or actually its reliability, during the first few years of the American Revolution. The militia's unreliability stemmed from a lack of any type of standardization in training and equipment, and the fact that militiamen agreed to serve for set periods of time (and at the outset of the conflict many were reluctant to go beyond their original commitment).[6] The difficulties in depending on and fighting with an ill-prepared militia force are clearly reflected in Washington's comments of September 24, 1776, when he wrote in exasperation:

> To place any dependence upon militia is assuredly resting upon a broken staff. Men just dragged from the tender scenes of domestic life, unaccustomed to the din of arms, totally unacquainted with every kind of military skill (which being followed by want of confidence in themselves when opposed to troops regularly trained, disciplined and appointed, superior in knowledge and superior in arms) makes them timid and ready to fly from their own shadows.[7]

By the end of the war, however, the militia had definitely proved its value as a reliable military force. Seasoned, well-disciplined, trained and equipped according to better standards, the militia served its country and

its commander exceptionally well. Looking into the Nation's future, Washington envisioned a new militia which was led by well-selected officers, trained periodically under uniform supervision, adequately supplied and composed of the best fighting men from the community. The design of such a militia was clearly drawn from his experiences in the Revolutionary War and sought to remedy the shortcomings which he had seen in the years 1776-1783.[8]

It should also be remembered that many of the Nation's founding fathers were products of the militia system. For example, George Washington had over three decades of experience with militia forces. Continental Army Major General John Sullivan was an officer in the New Hampshire Militia and Constitution signer John Langdon commanded a light infantry company in New York's eastern brigade. Hence there was a broad base of support for using the militia for future military operations.[9]

What the Constitutional Convention produced for a militia clause was much like the entire Constitution, a compromise. For those that wanted a standing army, a standing army was authorized but it existed only if the Government wished to organize it. The militia was authorized and, according to the Constitution, the Congress was to have power to:

> Provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.
>
> To provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.[10]

The Executive Branch, however, was given the following authority:

> The President shall be the Commander in Chief of the Army and Navy of the United States and of the Militia of the several states when called into the actual service of the United States . . . . [11]

Within the ratified Constitutional clauses, these are the only provisions that refer to the militia. In late 1791, however, the militia concepts were further strengthened by the second amendment to the Constitution which stated:

> A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.[12]

According to the Constitutional provisions, the militia can be called into Federal service for three eventualities: to execute the laws of the Union, to suppress insurrections, and to repel invasions. The Constitution gave the President command of the militia when in Federal service but recognized the State basis of the militia by reserving the appointment of militia officers for the State. For the purpose of this paper, it is important to note that the states were given the authority to train the militia but <u>according to the discipline prescribed by Congress.</u>[13]

These broad militia powers were enacted with the acceptance of the Constitution but, in order to implement the mentioned clauses of the Constitution, additional enabling legislation was required. In 1790 enabling legislation was introduced in Congress which had the strong support of President George Washington and Secretary of War Henry Knox.[14] The Knox Plan, as it was called, sought to establish a strong and well-trained militia and remedy through its reforms some of the militia's shortcomings which became obvious in the early phases of the Revolutionary War. The plan

was based on the premise that all male citizens owed service to the country. Key among the provisions of the Knox Plan was the desire to establish uniform standards for both training and organization for all militias. The Knox proposal sought to divide all eligible males into three categories: first tier, 18-20 year olds; second, 21-45; and third, 46-60. The younger men who comprised the first tier would be intensely trained according to uniform standards (to include either a 10- or 30-day camp of discipline) as the key force to be mobilized in emergencies. The 21-45 year old group would receive less intense training but would still serve as an important part of the nation's defense force. The older men, including the third tier, would be a reserve force to serve state and local needs in the event of emergencies. To further insure standardization and readiness, all arms equipment and clothing would come from Federal stores and militiamen were to be paid by the Federal government while in training camps.[15]

When finally passed, however, the Militia Act had been compromised to the point that it totally lost the key philosophy of its main promoters, Washington and Knox. The Militia Act of 1792, which would be the legal basis of this country's militia until 1903, was based on the philosophy that all able-bodied men between the ages of 18-45 owed military service to the Nation. Not only did they owe service, they were required to buy their own equipment. Regrettably, there were no specifics on training standards or the frequency of training and no provisions for Federal inspections to insure some type of national standardization. Simply the militia was to muster once a year, even if it had no arms or equipment.[16]

All of the existing states passed militia laws to provide for a militia, in keeping with the 1792 Act. With a virtual lack of Federal standards, the state laws varied considerably. Worse yet, as the Federal Government failed

to provide funding, neither did many of the states. A few, like New York, Massachusetts, Connecticut, and Pennsylvania, provided state funds and built strong militias. The remainder let their militias fall into disarray and even the required annual muster was often ignored.[17] The Militia Act of 1792 began and ended the first attempt to create a strong Mobilization Day force based on the militia. The failure was both at the national and state level (with the exceptions noted) since neither provided the funding or necessary legal structure to build a strong militia.[18] Even though Congress had the constitutional power to provide for organizing, arming and disciplining of the militia and perhaps most important, the power to prescribe the training for the militia, in 1792 it chose to exert at best minimum control.

The United States did not become engaged in a major conflict which would test the strengths (and weaknesses) of the Militia Act until the War of 1812. The vesting of too much authority in the states and the failure to establish some type of national standard for the militia made the War of 1812 a rather bleak affair for the militia. When the war began on April 18, 1812, Congress authorized a substantial force to defend the nation: 35,925 Regular Army troops, 50,000 volunteers and 100,000 militia.[19] While Congress had allotted over 50 percent of the duties for ground forces to militia troops, the weaknesses of the original militia laws did not permit militia forces to adequately perform their assigned tasks. With state officials holding strong powers under the Militia Act of 1792, the Governor of Connecticut determined that the presence of the British fleet off the US coast did not indicate an imminent invasion threat and declined to send Connecticut troops. The Governor of Massachusetts also refused the President's call for militia.[20]

Once the war began, Ohio militia under Brigadier General William Hull refused to cross the Canadian border near Detroit, based on the fact that they were called to duty to repel invasion, not to participate in one. When Major General Stephen Van Rensselaer tried to get New York Militia to cross the Niagara River and invade Canada, they refused to invade foreign territory. This does not mean that the militia failed miserably during the war. It should not be forgotten that the major land victory of the war (the Battle of New Orleans) was won by Andrew Jackson, a militiaman from Tennessee, commanding a body of militia troops and irregulars. What became obvious (and ominous) through the War of 1812 was the control that Governors had in alerting (or failing to alert) the militia for Federal duty.[21] Perhaps worse yet were the limiting perceptions that many state officials and the militiamen themselves had of their role in the defense of the Nation. Simply, their duty was to repel invasion (strictly interpreted) and suppress insurrections. They were also reluctant to leave the State that they were sworn to protect and certainly were not required to leave the Nation. The War of 1812 also showed that the Governor could personally interpret the level of threat and determine whether or not the danger to the Nation was sufficient to heed the President's call for troops.[22]

It is somewhat curious, at least by today's standards, that after the war came to an end in 1815, there were no serious attempts to remedy the shortcomings of the militia. Even though previously the administrations of Washington and Adams had urged Congress to establish a strong national militia[23] and Thomas Jefferson's administration relied both in actuality and philosophically on the militia, the years following the War of 1812 found the militia to be in a continuous decline.[24] Reforms to strengthen

the militia were repeatedly presented by various interest groups, but Congress never seriously attempted to tackle the issue of a weak militia system.

The basic problem with the old Militia Act of 1792 was simply its broad universality. As noted by one writer, the 1792 act ". . . imposed a duty on everyone with the result that this duty was discharged by no one."[25] Preferable from the standpoint of national defense was a law that would make the militia far more selective (and less numerous), supply better equipment and provide standardized training (to include some type of summer training or an extended muster).[26] In addition, unresolved through the 1792 act was the question of the militia's responsibilities in national defense, i.e., how narrowly or broadly defined was the issue of invasion or outside threat. The ability of the Governor to interpret the level of the threat and whether state troops should be committed outside the Continental United States, had caused the militia from some states to fail to perform its duties during the War of 1812.

As the years passed, the militia system created by the 1792 Act fell into disuse. The enrolled militia, consisting of those between the ages of 18 and 45 as specified in the 1792 act, failed more and more to muster and train nationwide, and a number of States simply abolished mustering their enrolled militia.[27] In its place the volunteer militia began growing. Throughout the country, groups of citizens interested in martial spirit, drill, pomp and ceremony began to form volunteer militia companies. The first half of the nineteenth century saw many units of this type formed from New Jersey to Florida in the east and from Wisconsin, Texas and California in the west. Each volunteer had to be able to purchase his own uniform and

weapons and, once a unit was formed, it applied for State recognition and State commissioning of its officers. This type of unit was utilized as the backbone of militia strength for the Mexican War, the Indian campaigns, and for the American Civil War.

While it is significant to note that the state volunteer forces carried most of the Nation's manpower needs in the American Civil War, a few states refused to send the troops requested by the President. The Governor of Kentucky refused the President's call, indicating that he would not send his state's troops against its sister southern states. The Governor of Missouri also refused to raise and send volunteer troops though Union loyalists ultimately circumvented the Governor. In the case of Tennessee, the Governor refused Lincoln's initial call and in the following month, transferred all of Tennessee's troops to the cause of the Confederacy.[28] Granted, all three cases involved border states and were thus aberrations to the national trend. Conversely, they illustrate that despite pressing national needs, the ability of the Governor to refuse troops for Federal service in a national emergency was still very much alive.

From the early 1800s until the end of the century there was no truly serious attempt to overhaul the militia system (specifically the 1792 act), and build it into the force originally sought by George Washington and Secretary of War Knox.[29] This lack of reform impetus was in part due to the growth of the volunteer militias which, in reality, provided for a type of Mobilization Day force for the Nation's needs, even if it was outside the structure established through the 1792 act. Furthermore, during this period there were few external threats to the nation which would cause sufficient pressure for a major militia reform. Still, several related events which

assisted in initiating long awaited reforms should be mentioned. The first is the formation of the National Guard Association in 1879.[30] Composed exclusively of officers, the Association sought to promote the National Guard (a name increasingly preferred rather than militia) as a significant part of the Nation's military force. For the remainder of the century (and for that matter even today), the Association has consistently campaigned for a National Guard that is a strong and viable part of this Nation's military force, and retains a State armed forces status in peacetime, rather than simply function as a duplicate of the Army reserve.[31]

Through the assistance of the National Guard Association, the first serious piece of reform legislation relating to the militia (in the post Civil War era) was passed in 1887. According to the 1887 act, a Federal appropriation of $400,000 to arm the National Guard was provided. In addition, states that had at least 100 active Guardsmen for every Senator and Congressman were authorized to receive grants. Considering what needed to be done in order to form the militia into an effective national force, the 1887 act was insignificant. Conversely, its passing showed the emergence of an organized political group which had begun actively campaigning for a stronger Guard, in keeping with the intent of the original (and uncompromised) Militia Bill of 1790.[32]

Pressure for such a change had begun none too soon. As the end of the century neared, the United States was emerging as a major industrial and commercial power and would soon begin actively engaging in world politics. Yet this country, rapidly maturing, was entering an important new phase in her history without a significant standing army, an effective militia, or an active reserve force of any type. This would become very clear when the United States entered the Spanish-American War in 1898.

The Spanish-American War served as a catalyst for change for the entire American military establishment including the National Guard. While the Militia Act of 1792 remained on the books requiring universal military service for all able-bodied men between 18-45, it had long fallen into disuse. On the very eve of the war (April 22, 1898), Congress passed a bill which recognized that the US Army consisted of two components: the Regular Army and the volunteer forces. This act ignored the enrolled militia and left unresolved how the Army could accept National Guard troops into Federal service. National Guard troops could, however, volunteer for Federal service and retain their prewar unit integrity and their own officers. Normally under this act a National Guard unit would assemble and, in mass, volunteer and take the oath which mustered them into Federal service.[33]

Fortunately, the Spanish-American War was an intensely popular war and the nation did not lack for volunteers. Records would show that the majority of the troops that fought in Cuba and the Philippines and in the subsequent Philippine insurrection were National Guard regiments which had volunteered.[34] Conversely, the Spanish-American War also showed a significant problem in getting the major Mobilization Day element into Federal service. To be more specific, while National Guard units could volunteer for Federal service, they could also elect not to serve.[35] Thus, if National Guard troops only "volunteered" for Federal service and could refuse to serve, they could not be regarded as a viable and dependable part of the Nation's defense.

As a result of this and other problems which arose during the Spanish-American War, there was substantial pressure for change of both the Army structure and the militia. For the National Guard, change came through

the Dick Act of 1903. This act is highly important because through it Congress finally utilized a long dormant constitutional power, the power to organize, arm, and set standards for training the militia. In place of an enrolled militia which included all able-bodied men from 18-45 (as provided in the 1792 act), the Dick Act provided for an organized militia which would be known as the National Guard. This new or organized militia was required to pattern itself, in terms of organization, after the Regular Army. In contrast to the old militia act, Federal funds were provided for arms and equipment.[36] In order, however, for funds to be provided, States had to agree to assemble their soldiers at least twenty-four times a year for drill, conduct a minimum of five days of summer camp and have a formal inspection by either a militia or an active Army officer. Furthermore, to provide some measure of continuity between Army practices and the National Guard, Regular Army officers were assigned to duty with the Guard as advisors. Finally, Guardsmen were allowed to attend Army service schools and most important, were given Federal pay when on joint maneuvers with Regular Army units.[37]

The Dick Act is a very significant piece of militia reform legislation. Through it three significant things happened:

1. Congress, faced with the fact that the United States was becoming a world power with the accompanying responsibilities, exercised a long dormant power and began providing for the organization, arming and setting standards for the training of the militia.

2. The old enrolled militia, through this act, finally expired and its place was taken by its logical successor which had evolved during the 19th century, the organized militia now called the National Guard.

3. The National Guard officially took its place as the first echelon of reserve for the regular Army. Through its provision of Federal funds and Federal recognition, this act was the first of many steps by which Congress began exercising its authority over the National Guard.

The Dick Act, while an important reform, left one very important problem unresolved. Within its provisions was a limitation on the length of federal service for National Guardsmen. According to the Act, Guardsmen could not serve for more than nine months, reflecting the "short war illusion" that so many people had as a result of the late 19th century experience in war.[38] In addition, the Dick Act failed to guarantee the integrity of Guard units as organized entities, once they entered Federal service. As a result, if Guard units enlisted in Federal service they became a part of the volunteer Army rather than retain their identity as Guard units. Volunteer Army membership was thus composed of both militia/nonmilitia members.[39]

The Dick Act was followed by the Militia Act of 1908, called by some the second Dick Act. This piece of legislation continued the process begun in 1903 which said that the militia or National Guard would be called forth before any volunteer units in a national emergency, thus serving as the first echelon of reserves. The reader should remember that volunteer militia had carried the bulk of this Nation's military responsibilities in the Mexican War, the American Civil War, and the Spanish-American War. The 1908 Act expanded this concept by requiring that all branches of the organized militia be called before any volunteers could be utilized by the Federal Government. Even more significant, the act further increased Guard appropriations and removed the nine-month limit on Federal service, giving

the President the authority to fix the term of service.[40] The law also stated that the National Guard was to be available either within or without the territory of the United States.[41]

Even though the Acts of 1903 and 1908 had firmly and legally placed the National Guard in the role of the Nation's first line combat reserve, obstacles still eluded resolution. The first was the attitude of some military and political leaders that the Guard, with its State affiliation and its responsibility to the Governors, could not be an effective and dependable national reserve.[42] Worse, however, was the legal challenge which emerged in 1912 through an opinion of the Judge Advocate General of the Army and the US Attorney General.

In earlier conflicts in the Nation's history the length of service of militiamen on Federal duty and the question of whether militiamen could serve outside the borders of the United States had been a contentious issue. Seemingly this was resolved through provision of the Act of 1908 which authorized the President to specify the term of service and removed the geographical limitations on Guard service. In 1912, however, the Judge Advocate General held that there was no Constitutional provision for Federal use of the National Guard outside the borders of the United States. The Attorney General of the United States, in an opinion of the same year, concurred with the Judge Advocate General.[43]

In essence, both of these issues required additional research and legislation before the problems could be resolved. The continued interest in military reform, first initiated with the Dick Act, culminated in 1916 with the National Defense Act. This act truly completed the process begun

in 1903 and firmly installed the National Guard as a viable force for national defense. According to the 1916 act:

1. The number of annual "drill" periods were doubled from the 1903 level of 24 to 48 and the length of summer encampment was changed from 5 days to 15.[44]

2. Guardsmen would be paid for drill and for summer encampment.[45]

3. Whereas the Dick Act of 1903 had allowed Governors to request the assignment of regular officers to advise National Guard units, under the 1916 act the President received the authority to assign regular officers without a gubernatorial request.[46]

4. Of some note, the National Defense Act gave a larger Federal role in the appointment of officers in the National Guard. Granted, as per the Constitution, the States were reserved the right to appoint officers but this act prescribed the qualifications of an officer and provided for Federal recognition of each officer. If Federal recognition was not given, an officer could not receive Federal pay.[47]

5. Each soldier (both officer and enlisted man) was required to take a dual oath, both to the Nation and to his respective State.[48]

6. Of equal importance, each National Guard unit would have to be Federally recognized and would have to be organized in accordance with Army Tables of Organization. Thus, instead of consisting of basically infantry, cavalry, and a few artillery units, the new Guard would have a full range of combat units to include support units and even aviation assets.[49]

7. Finally and officially, the name of the reorganized militia would be the National Guard.[50]

One very significant issue was solved through this act: the legality of commiting militia forces to conflicts fought on foreign soil. In accordance with its provisions, when the President called for National Guard troops through the Governor, they were militia. Conversely, when congressional powers authorized the use of military power, to exceed that of regular forces available, the President could draft into Federal service members of the National Guard who were then liable to serve the Nation for the time and place specified by the President and who, in fact, ceased to be a part of the regular militia.[51]

It was through this legal structure that the National Guard entered World War I in 1917. The value of the force as a strong combat reserve was proven through that war. The American Expeditionary Force fielded a total of 43 divisions for commitment to the war in Europe. Seventeen of these were National Guard divisions.[52] The 30th Division, composed of National Guard troops from North Carolina, South Carolina, and Tennessee, received the greatest number of Medals of Honor in the entire Allied Expeditionary Force. In addition, the records of the German High Command, available after the war, ranked American divisions in France, listing eight as being excellent or superior in quality. Of that number, six were National Guard divisions.[53] The National Guard had proven itself to be a viable part of this Nation's defense.

Even as the Spanish-American War and the coming of World War I had spurred major military reforms as seen through the Acts of 1903, 1908, and 1916, the end of World War I brought about additional moves for reform. In many respects, two major issues needed resolution. First was the continual issue that had originally emerged following the turn of the century, the

desire of some of the Nation's military and political leadership to abolish the National Guard or organized militia and replace it solely with a separate Army reserve organization[54] (or in 1919 some type of universal military training). Even more serious for the National Guard, the 1916 National Defense Act had allowed for the Guard to be in essence disbanded and drafted into Federal service, due to a congressional call for troops. The act, however, had failed to supply a mechanism for its reconstitution after such a call and when World War I ended the Guard was not immediately reconstituted. Thus, the need for still another defense reorganization act.

After a concentrated attempt by elements within the defense establishment to abolish the National Guard, supposedly an Army with 48 commanders, the Army Reorganization Act of 1920 was passed. Among its provisions were three key reforms that affected the National Guard. First and perhaps foremost, it provided that when the President ordered the National Guard to Federal service, upon its release it would revert to National Guard status. Thus the post-World War I situation was remedied.[55] Second, it recognized the National Guard as an integral part of the defense establishment by giving it strong input into the decisionmaking process on the national level. In the future, when the War Department or Army Staff considered items that affected the National Guard structure, half of the composition of any committees considering such matters had to be National Guard officers. Furthermore, the Militia Bureau of the War Department was reorganized requiring that its Chief should be a National Guard officer of at least the rank of Colonel and with 10 years experience in the National Guard.[56] Third, it recognized officially that the defense establishment of the United States consisted of the Regular

Army, the Army Reserve, and the National Guard. The National Guard, however, was only a part of the active Army when mobilized for Federal service. Otherwise, it stood apart from the Army's structure.

With the 1920 Act as a legal basis, the postwar reorganization of the National Guard proceeded and by 1922 the National Guard had again been organized as a part of the Nation's defense force. The final piece of legislation that brought the National Guard into its rightful place in the country's defense establishment, and thus completed the process initiated in 1903, were the amendments to the 1920 Defense Act implemented under the Roosevelt administration on 15 June 1933. Unresolved through earlier legislation was the necessity for drafting National Guardsmen into Federal Service rather than simply transferring units into Federal Service. By drafting individuals into Federal Service, in keeping with the Act of 1916, their ties to their National Guard backgrounds were severed and units with proud histories and traditions could be (and were in World War I) dismantled. These hasty reorganizations destroyed unit lineage and traditions and the unique elements that produced unit cohesion.

The Amendments of 1933 were in many respects as far reaching as the Defense Acts of 1903, 1908 and 1916. In a sense the 1933 amendments added another tier to the structure of the armed forces. It created the National Guard of the United States, whose personnel and organization were identical to the National Guard of the various states. This new organization was a part of the Reserve Component of the Army at all times and was administered under the Army clause of the Constitution rather than the Militia clause. With this provision, Congress created a doppelganger - a shadowy double - for the National Guard as it existed in the States. This "double" had

definite National responsibilities.[57] Even more significant is that testimony of key congressmen which seems to indicate their belief that the provisions of the amendments tailored the militia force so that it was in keeping with General Washington's philosophy on the militia.[58]

As a result, anytime that Congress declared a national emergency, the President had the power to order units into Federal Service. This order to Federal Service would be under the Army clause as a National Guard of the United States. Once in Federal Service the Army was to keep Guard units intact, insofar as possible, rather than indiscriminately break them up as was done in 1917. Though given the power to order the National Guard of the United States into Federal Service, the National Guard of the various states could still be called to Federal Service under the Militia clause and through the Governors of the 48 states.[59]

The Acts of Congress stretching from 1903 through the Amendments in 1933 developed the National Guard into its current configuration. Thus, today every Guardsman is both a member of the Army's reserve and of his/her state militia. The Guard can be called to service as militia, through the Militia clause, or ordered to active duty as a part of the Army's reserve. This dual status is highly significant because, for all practical purposes, it ends the old argument that the National Guard is not a dependable part of the nation's reserve forces, due to its state connection. As a result of congressional action the Guardsman is literally twice the soldier, a reservist and a state militiaman.

This whole question of the Guard's command and control relates back to the comments at the first of the paper, the problem with Governors who for whatever reasons are balking at overseas training for the Guard. The

questions remain: Can they do this? Or how much control can the Governor exercise over the National Guard's training? And how does this affect the role of the National Guard as a part of the total defense force?

Answers to such questions are neither easy nor clear cut. According to the Constitution the States are given power over the organizing, arming, and disciplining of the Militia. The granting of specific authority to discipline or train the militia would seem, at least on the surface, to strengthen the case of the governors.

Conversely, the Constitution states that the training of the militia by the state is to be done "according to the discipline prescribed by Congress."[60] For 111 years the Congressional power to set training standards for the militia lay dormant with few attempts to exercise it. Beginning in 1903, with the Dick Act, Congress clearly indicated its desire and ability to prescribe standards for the discipline or training of the militia. In a series of acts between 1903-1933 Congress began asserting its constitutional power and organized the militia into what the writer believes was intended by individuals like George Washington and Secretary of War Knox, a force trained under national standards as the first line combat reserve of the United States.

Congressional authority over training can be seen through the 1903 act in which Congress specified the number of drill periods and the length of summer encampments, the 1908 Act which doubled the length of both training periods and the provision within the 1908 Act which provided for the Army to assign Army advisors to National Guard units. Even more specific, National Guard units for most of this century were allowed to provide their recruits with a state organized basic training sequence. In 1958, however,

responsibility for basic training was removed from the State's authority and National Guard recruits were required to take part in basic training with their Army and Army Reserve peers.[61] In short, Congress has had authority over training since the ratification of the Constitution and, in this century, has begun to utilize this power.

Actually, Congress has delegated its authority over prescribing the discipline of the National Guard. It has authorized the Secretary of the Army to prescribe regulations for drills of the Guard. In turn, the Secretary of the Army has delegated the authority to inspect and evaluate the training of the Army National Guard to the Commanding General of US Army Forces Command (FORSCOM), who coordinates with the National Guard Bureau for nominations and obtains approval of units for overseas deployment training. Based squarely on the provisions of the Constitution, Congress has asserted its legal authority to perscribe training and has done so by delegating the actual prescription to the Secretary of the Army and the Chief of the National Guard Bureau.[62]

Through its actions in the 20th century, Congress has clearly demonstrated its intent to be actively involved in organizing, arming and training militia. This historical dialogue should make it clear that had it not, the National Guard would have never become the military reserve it is today. Congressional authority and ability to <u>organize</u> and <u>arm</u> is clearly evident through the Tables of Organization utilized by the Army National Guard and through its utilization of federally supplied equipment. These constitutional powers to provide for the Guard's arming and organization are not being questioned, only the extent of its training powers.

It is important to remember that as National Guard units are deployed overseas, they are on training not combat missions. This is clearly in keeping with current policy which values the National Guard as an integral part of the first line defense of the United States.[63] Thus, as part of the Nation's defense force, the National Guard should have integrated training assignments. If Regular Army units train and deploy overseas, so should National Guard units that might have future overseas assignments.

This training concept is a part of CAPSTONE, a system which provides National Guard units with their likely OCONUS assignments in the event of war. An important part of CAPSTONE is periodically assigning National Guard units to annual training in areas where they could be employed in the event of war. Hence, training National Guard units in overseas locations is an important part of a systematic training scheme for units, vital to national defense.

It is curious that no objections have been registered about sending Army Guard units to Germany, England or Korea or Air Guard units all over the globe. The outcry from certain Governors seems only to have been on training in Latin America, or specifically in Honduras. If there is truly a concern about legal powers or legal authority, a cursory review of the Consitution produces the conclusion that foreign policy and matters of defense are strictly delegated to the executive and legislative branches of the Federal Government, not the fifty State houses. Governors simply should not have the power to restrict the training of the major combat reserve of the United States, solely because they disagree with the foreign relations policy of the administration. The question remains, do they have this power?

Again the issue emerges as to the dual nature of the National Guard since 1933. Under the provisions of the 1933 Act which allows the President to order the National Guard of the United States to active duty, a Governor does not have the authority to stop an ordered federalizaton. The President must only notify Congress which has the power of reversal if it so desires. Even the most outspoken and consistent of the gubernational critics, Bruce Babbit, former Governor of Arizona and an announced Democratic presidential candidate, recognizes this fact.[64] When, however, Guard units are called to two weeks training under the Militia clause it becomes a matter of contention and of interpretation.

In referring to the legal rights of refusal by a state, the Armed Forces Reserve Act of 1952 should be mentioned. Among the provisions of this act, passed by Congress on July 9, 1952, was the clause giving authority to place Guardsmen in training status for as many as fifteen days annually. This, however, was to be done with the consent of the state's Governor.

> A member of a reserve component may, by competent authority, be ordered to active duty or active duty for training at any time with his consent: Provided, That no member of the National Guard of the United States or Air National Guard of the United States shall be so ordered without the consent of the Governor or other appropriate authority of the State, Territory, or District of Columbia concerned.[65]

While this would seem to strengthen substantially the position of the seven Governors, the writer would state that this may not be of as much consequence as some have asserted. This position is taken because:

1. In a sense, the Governor's authority over the non-Federalized guard is not really dependent on this act of Congress. The Governor's authority over the state militia (and thus over the National Guard of the States) and

the requirement of Federal authorities to request troops through the Governors predates this, actually originating in Constitutional provisions.

2. A number of these provisions were originally amended into the act at the request of the National Guard Association in an attempt to satisfy critics of the act who thought HR 5426 would totally federalize the Guard and its training. It seems certain that the Association never intended for amendments which recognized the State control of the Guard to be used to block legitimately scheduled training which did not conflict with State needs.[66]

3. In any case, the 1952 provision was certainly not designed to be utilized as a springboard for partisan quarrels over the President's foreign policy.

According to the Supreme Court decision entitled Lederhouse vs. United States (1954),[67] the only true power that the Federal Government has over the nonfederalized militia is the power to control the purse strings. This may call to question the legal powers available to delegate the full authority to schedule training to the Secretary of the Army and the Chief of the National Guard Bureau. In fact, without Constitutional amendment, the actual legal authority which the national government has over the non-Federalized militia may be difficult to settle.

Conversely, since the Dick Act of 1903, Congress has increasingly exercised its constitutional authority to prescribe the discipline or training of the militia and to organize the militia into a strong part of the Nation's defense force. This trend, evident for some 83 years, was repeated again with the addition of the Montgomery Amendment to the Fiscal Year 1987 Department of Defense Authorization Act. According to this provision:

> With regard to active duty outside the United States, its territories, and its possessions, the consent of the Governor described in subsections 672(b) and 672(d) of title 10 may not be withheld in whole or in part because of any objection to location, purpose, type, or schedule of such active duty.[68]

This amendment was signed into law by President Reagan on November 14, 1986, and within one month a suit was filed by Governor Rudy Perpich (D-Minnesota) and State Attorney General Hubert H. Humphrey III. Minnesota's action questions the constitutionality of the Montgomery amendment since it limits the ability of the States to control their militias.[69] This suit was followed by Senate Bill 375, introduced by Senator J. James Exon (D-Nebraska), which would give the governors a legal right to block guard deployments but give the president the authority to overrule the governor.[70]

It is too soon to ascertain whether the Montgomery amendment will withstand the legal scrutiny, but one thing seems obvious. If taken, in historical context, the Montgomery amendment is simply one more step by Congress to exercise its constitutional power and prescribe standards for training of the militia. These steps began in 1903 with the Dick Act and, in many respects, the Montgomery Amendment is another step in the historical progression of Congress exercising its authority over the Guard. More important, this most recent act should not be regarded as an attempt of Congress to usurp State powers or override State interests. Since the nation has increasingly placed more importance on the Guard for the country's defense, Congress is rightfully concerned if legitimate and scheduled training is interrupted. Congress must continue to exercise its authority because it recognizes that the National Guard is the nation's first combat reserve for an emergency.

ENDNOTES

1. The reader should remember that this number can be interpreted in several ways. For example former Governor Babbit indicated his opposition to the Reagan Administration's Central American policies in Honduras, but Arizona MPs were in Honduras at that time. He later refused to permit a small number of engineers to go to Honduras. Former Governor of Kansas, John Carlin's Office, at first said he wouldn't allow Kansas Guardsmen to go to Honduras but he later permitted them. Only a few have been totally consistent on the issue.

2. Figures for 1986 were supplied by Public Affairs, National Guard Bureau.

3. "Hands Off National Guard Governors Say," Washington Post (August 27, 1986) p. A-5.

4. In fact it may actually be accelerating. The year 1987 has seen the introduction of the issue in to the court system through a suit filed by Governor Rudy Perpich of Minnesota. Since this suit was filed, a total of 11 states have joined Minnesota in testing the Legality of the Montgomery amendment to the fiscal year 1987 Department of Defense Authorization Act. Of the 12 states, eight governors are Democrat and four are Republicans. See "Governors Hit Law Banning Vetoes of Foreign Duty for Guard," The Patriot, Harrisburg, Pennsylvania, February 19, 1987, p. A-5.

5. John K. Mahon, History of the Militia and the National Guard, (New York: Macmillan Company, 1983) pp. 37-38.

6. George Washington in a letter to Congress on 9 February 1776, reprinted in The Militia, Major James Brown Scott, ed. Senate document No. 695, January 12, 1917 (Washington: US Govt. Printing Office, 1917) pp. 21, 22.

7. George Washington in a letter to Congress on 24 September 1776, reprinted in The Militia, Major James Brown Scott, ed. Senate document No. 695, January 12, 1917, (Washington: US Govt. Printing Office, 1917) p. 23.

8. Good references to Washington's opinions can be found in "Washington's Sentiments on the Peace Establishment," Appendix I in John McAuley Palmer, Washington, Lincoln, Wilson (New York: Doubleday, 1930) p. 375-396.

9. The list of founders that had militia experience would be quite lengthy. The reader should remember that a substantial number of the former British colonial leadership had some type of militia experience. For a good background on this issue see Robert K. Wright, Jr., The Continental Army (Washington: Center of Military History, 1983) pp. 6-11, 43-44.

10. Constitution of the United States, Article I, Section I.

11. Ibid., Article II, Section II.

12. Amendments to the Constitution of the United States, Article II.

13. Constitution of the United States, Article I, Section I.

14. Washington's ideas are clearly expressed in "Washington's Sentiments on the Peace Establishment," pp. 375-376. Washington recognized prevailing attitudes toward the standing Army stating: "Altho' a large standing army in time of Peace hath ever been considered dangerous to the liberties of a Country. . ." As a result, he recognized the future defense of the nation would rest on the militia. The militia would be "A Well Organized Militia; upon a Plan that will pervade all the States, and introduce similarity in their Establishment, Maneuvers, Exercise and Arms.".

15. The Knox Plan called for a very strong role by the Federal Government in supporting the militia. It required the US Government to make adequate provision to supply arms, clothing, rations, artillery, ammunition, forage, straw, tents, and camp equipment for every requisite for the annual camps of discipline. This proposed strong role of the federal government in militia affairs doomed the Knox Bill to such heavy amendments that it lost its real purpose. As a proposal by the Federalist faction, it was bitterly opposed by those who favored states' rights. Knox's Plan is detailed in the Annals of Congress, 1st Congress, 2nd Session (1789-1790), Vol. II, (Washington: Gales & Seaton, 1834), pp. 2142-2162.

16. The actual law can be found in the Annals of Congress, 2nd Congress, 1st Session (1791-1792), (Washington: Gales & Seaton, 1849), pp. 1370-1372.

17. Mahon, History of the Militia and the National Guard, pp. 52-59 and 78-83.

18. Note that the Jeffersonians with their faith in the Militia provided for $200,000 per annum to arm the Militia with their act of 23 April 1808. By the time that it was divided among the states, however, it too was insufficient.

19. John K. Mahon, The War of 1812 (University of Florida Press, 1972) p. 4.

20. The Judicial Court of the Commonwealth reviewed this decision of the Governor and sustained it (Opinion of the Justices, 8 Massachusetts, 548, 1812) but, in 1827 the Supreme Court in Martin vs. Mott ruled that the President's determination to call forth the Militia was binding and conclusive on all and was not subject to judicial review.

21. James Monroe, appointed Secretary of War during the War of 1812, was certain the militia system had failed and thus proposed a national reserve army with no state affiliation to replace it. This proposal failed and with militia and volunteers winning the Battle of New Orleans, attempts at reforming or replacing the militia faded.

22. It is important to note that while the Militia and some of the States' Governors balked during the war, the major problem exposed by the war was not the Militia, it was that of leadership. The United States stumbled blindly into the War of 1812 with virtually no strategy, no strategic doctrine and no true military leadership. See Russell F. Weigley, The American Way of War. (Bloomington: Indiana University Press, 1977) p. 55.

23. As is noted in John K. Mahon's The American Militia: Decade of Decision 1789-1800 (University of Florida Press: 1960) p. 62, both Washington and Adams called for Congress to take steps to create a strong National Militia. Despite their urging this was not done.

24. Weigley notes (pp. 40-55) that Jefferson was strongly in favor of Militia in preference to professional military. He even wanted a substantial part of the coastal defense to be based on gunboats manned by Militiamen.

25. Frederick B. Wiener, "The Militia Clause of the Constitution" Harvard Law Review, (December 1940) p. 187.

26. John K. Mahon, "A Board of Officers Considers the Condition of the Militia in 1826," Military Affairs (Summer 1951) pp. 90-93. This Board under John Q. Adam's administration made a number of proposals including:

1. Cut the active Militia down to 400,000 and train that number seriously.
2. Distribute drill manuals to all Militias at Federal expense.
3. Run a training course each year in every state for at least ten days at Federal expense.

This reform, like others proposed, was never implemented.

27. Delaware abolished the system in 1831, Massachusetts in 1840, Maine, Ohio and Vermont in 1844, Connecticut and New York in 1846, Missouri in 1847 and New Hampsire in 1851. Mahon, History of the Militia and National Guard, p. 83.

28. Ibid., p. 99.

29. Annals of Congress, 1st Congress, 2nd Session (1789-1790), Vol. II, pp. 2142-2162.

30. John K. Mahon, History of the Militia and National Guard, pp. 118-119.

31. In her work, The National Guard in Politics (Cambridge: Harvard University Press, 1965) p. 3, Martha Derthick notes that since the Association was formed it has two principal political goals: To secure federal assistance and be the front-line reserve to the regular army; and to retain legal status as a state military force in peacetime, which gives the Guard freedom from Federal control.

32. John K. Mahon, History of the Militia and National Guard, p. 119.

33. Ibid., p. 126, 127.

34. It should not be forgotten, however, that National Guard regiments were not the only volunteer regiments that fought in this war. There were other volunteer regiments that did not have any Guard affiliation.

35. Wiener, The Militia Clause of the Constitution, pp. 192-193.

36. The Dick Act was passed by the 57th Congress in 1903. House Reports on this are included in H. R. Report No. 1094, 57th Congress, 1st Session, 1902.

37. Wiener, The Militia Clause of the Constitution, pp. 193-196. See also Major General Charles Dick, "When General Dick Took A Look at the Dick Act," National Guard, (January 1910) pp. 23-25.

38. In addition, as Elbridge Colby mentions in his manuscript, Elihu Root, Secretary of War firmly believed that the National Guard should be used only as a short term emergency force as per the crisis of the summer of 1861. See Elbridge Colby, The National Guard: A Half Century of Progress, an unpublished manuscript (Manhattan, KS: Military Affairs, 1977) Chapter II, p. 21.

39. This was specifically stated in General Orders, Headquarters of the Army, No. 3, dated 7 January 1907.

40. Wiener, The Militia Clause of the Constitution, p. 197.

41. Ibid.

42. The problems the Guard faced in this regard can be seen in Chapter IV of Colby's manuscript as previously cited, pp. 1-26.

43. The Opinion was first given by E. H. Crowder, Judge Advocate General. This was followed by Attorney General George W. Wickerham's Opinion. See Opinion of the U.S. Attorney General, (Washington: US Department of Justice, 1913), Opinion No. 322.

44. An Act for making further and more effectual provision for the National Defense and for other purposes, The National Defense Act approved June 3, 1916, as Amended, to January 1, 1945, Inclusive with Belated Acts and Notes, Section 92, p. 124, set requirements at 48 Armory Drills annually

and fifteen days of field service. With these provisions Congress finally set firmly established training requirements of the type envisioned by the Knox Plan. The Knox concept called for 18 to 20 year olds to attend 30 day training Camp and 20 year olds to attend 10 days only. It was weak, however, in that the 21-45 year-olds would muster only four times a year. See Richard H. Kohn, "The Murder of the Militia System in the Aftermath of the American Revolution," Military History of the American Revolution, proceedings of the Sixth Military History Symposium USAF Academy, 1974, pp. 118-119.

45. Pay for drills, a concept long favored by National Guard Association of the United States (NGAUS) and certainly well deserved, was included in Sections 109, 110 of the 1916 National Defense Act (pp. 132-133).

46. Defense Act of 1916 also allowed the President to assign Regular Army officers as Chief of Staff of Guard Divisions in service of the United States. See Section 65, p. 108.

47. In actuality the Defense Act of 1916 (Sections 74-77, pp. 114-117) restricted at least to some extent the appointive powers of the state. While the state still has the power to appoint officers, Federal recognition is necessary in order for an officer to receive Federal pay. Thus even though the state retains its constitutional appointment power, the Federal government assumes an important role since it serves as the National Guard's primary paymaster.

48. This dual oath was required to properly utilize the draft provision which allowed, when Congress required troops in excess of the Regular Army, the President to draft into Federal services members of the National Guard. The issue of drafting the Guard into Federal service is discussed in detail in General S. T. Ansell, "Status of State Militia Under the Hay Bill," Harvard Law Review (Vol XXX 1917) pp. 712-723.

49. The significance of this provision should not be overlooked. The number of new specialized units in the Army was rapidly growing and if the Guard was to retain its rightful position in national defense, its units would have to be compatible with Army TOEs.

50. The term National Guard is a comparatively new term, now utilized in preference to the militia. The movement to refer to the state forces as the National Guard began in the late 1870s and early 1880s. The old state enrolled militias were in many respects a defensive formation but the emergence of the organized militia or the National Guard brought the militia into an era where it was recognized as the first line reserve of the Army in time of emegency. Thus the adoption of the term National Guard is significant, clearly indicating the Guard's role in the nation's defense.

51. See the National Defense Act, Section III, p. 135.

52. To be specific, of the AEF strength, eight divisions were regular army, eighteen were draft divisions and seventeen were National Guard.

53. National Guard Bureau, Office of Public Affairs, A Brief History of the Militia and the National Guard (Washington: National Guard Bureau, 1986) p. 37.

54. The writer recognizes that the Army Reserve had been organized in 1908. See Richard B. Crossland and James T. Currie, Twice the Citizen: A History of the United States Army Reserve 1908-1983 (Washington: Chief of the Army Reserve, 1984) pp. 13-20.

55. Amendments to the Act of 1916, on 4 June 1920, including The States at Large of the United States of America from May 1919 to March 1921, Vol. XLI, Part 1.

56. Ibid. This removed a serious bone of contention. Though the 1916 Defense Act created a military bureau, its head was not a militia or Guard officer.

57. Act of 15 June 1933, The Statutes at Large of the United States of America From March 1933 to June 1934, Vol. XLVIII, Part 1, pp. 153-162.

58. This fact was noted in House of Representatives Rep. No. 141, 1st Session of the 73rd Congress (1933) p. 26.

59. The Doppelganger situation has not caused major problems for the Guard. Conversely the reader should review the Little Rock controversy in 1955 to see the legal problems that can occur. When the Little Rock School desegration controversy emerged in the Fall of 1957, Governor Orville Faubus called out the Arkansas National Guard to maintain law and order. Since they in actuality were being utilized to bolster the segregationist position, President Dwight Eisenhower called the Arkansas Guard to Federal Service, in essence requiring them to obey the National Commander in Chief rather than the State. Though the Arkansas Guard obeyed the President, the Little Rock situation posed an interesting dilemma for Soldiers of State.

60. Article I, Section 8, Clause 16, The Constitution of the United States of America.

61. See Review of the Reserve Program, Hearings before the House Armed Forces Committee, 1957, 83rd Congress, 1st Session, pp. 675-700.

62. Review of Message on "Responsibility of Training of the ARNG," a message from the Staff Judge Advocate to the DCSOPS, 20 December 1985.

63. Ibid.

64. Bruce Babbit, "If Guardsmen Go to Honduras," New York Times, September 16, 1986, p. A-27.

65. United States Code, Congressional and Administrative News, Eighty-Second Congress (Second Session) 1952, Vol. I, p. 468.

66. See Hearings Before a Subcommittee of the Committee on Armed Services, United States Senate, Eighty-Second Congress (Second Session) on HR 5426, pp. 246-305, and Derthick, The National Guard in Politics, pp. 98-119.

67. See Lederhouse vs. United States, (1954), 126 F. Supplement 217.

68. 32 United States Code 501 proposed amendment. The amendment was passed as House joint resolution 738.

69. "Governors Hit Law Banning Vetoes of Foreign Duty for Guard," The Patriot, Harrisburg, PA, February 19, 1987, p. A-5. In addition, Hawaii, Maine, Massachusetts, Ohio, and Vermont indicated that they would join Minnesota's lawsuit.

70. Rick Maze, "More State Control Over Guard Sought," Army Times, February 9, 1987, p. 24.

GLOSSARY OF KEY TERMS/ACTS RELATING TO THE MILITIA

Key Terms:

Capstone - System devised to provide National Guard units with their probable wartime mission and area of assignment in the event of a national emergency. Through this system, a Guard unit can train with its capstone unit (wartime gaining command) and develop a working relationship.

Enrolled Militia - Old militia concept included both in the Knox Plan and the Militia Act of 1792. Required that all able bodied men be enrolled in the militia at the age of 18. All enrollees had to provide their own uniforms, arms and equipment.

Mobilization Day Army - The traditional American method to field an army, an M-day army, composed of National Guard, Reserve, and volunteers rather than maintaining a large standing army.

National Guard - Name used increasingly after the 1870s in preference to the militia. It became the mandated term for the militia troops through the National Defense Act of 1916.

National Guard of the United States - Created by the 1933 amendments to the National Defense Act of 1920. Members of the State's National Guard became members of the National Guard of the United States, thereby making them members of a new type of reserve, administered under the Army Clause, rather than the Militia Clause of the Constitution.

National Guard of the Various States - Terminology devised by the 1933 amendments to the National Defense Act of 1920 in order to differentiate the state force, the militia or National Guard from the National Guard of the United States. The latter is a national force with only federal responsibilities and administered under the Army Clause of the Constitution.

Organized Militia - Term used to describe volunteer militias which were organized, uniformed and at least partially trained. The organized militia was distinctly different from the enrolled militia, as provided for by the 1792 Militia Act. The enrolled militia consisted of able bodied men 18-45 who by virtue of their citizenship were enrolled in the militia though they seldom had arms, uniforms or training.

Volunteer Army - Through most of the 19th century the United States relied on a volunteer army to fight its wars, rather than a standing army or a conscripted force. The volunteer army of the Spanish American War was composed of militia-affiliated volunteers and non-militia volunteers.

Volunteer Militia - Type of militia which developed in the United States in the 1830s-40s. Volunteer militia was organized locally by individuals and, once organized, these organizations applied for recognition by their state government.

Significant Militia Acts:

Knox Plan - Term referring to the original Militia Bill introduced into Congress in 1790. Provided for universal military service from ages 18-60, established strong national standards on training, and provided federal funds and equipment for the militia.

Militia Act of 1792 - First militia act passed by Congress, implementing the militia clauses of the Constitution. Provided for universal military service for all able-bodied men from 18-45 but failed to provide for any national standards for state militias. Though all states passed militia acts, the failure of either the United States or most state governments to provide adequate funds, and the broad universality of the 1792 Act, doomed it to failure.

Dick Act of 1903 - First significant militia act passed by Congress since the Militia Act of 1792. Provided funds for state militias if a state would assemble its militia 24 times annually, provide five days of summer encampment annually, and have regular inspections by either state level militia or active army officers. In addition, federal pay was given to militia/guardsmen when they were on joint maneuvers with regular army units.

Militia Act of 1908 - Called by some the Second Dick Act. Increased federal appropriations for the Guard and required the Guard to be called before any volunteer units in the event of an emergency. In addition, it removed the traditional nine-month limitation of federal service for Guard units and permitted Guard units to be used both within or outside the United States.

National Defense Act of 1916 - Doubled the number of drills required in the Dick Act and lengthened summer camp to fifteen days. Furthermore, this act provided for Federal recognition of Guard officers, that is, in order to be eligible for Federal pay. Perhaps most important, it mandated use of the name National Guard, in preference to militia.

National Defense Act of 1920 - Among its provisions it reorganized the Militia Bureau requiring that bureau chiefs have at least 10 years' service in the National Guard. Recognized that the Army consisted of three components: Regular Army, Army Reserve, and the National Guard. Perhaps most important, provided for reversion of federalized Guard troops to state-controlled Guard upon their release from federal service.

1933 Amendments to the National Defense Act of 1920 - Created a new component called the National Guard of the United States. This component was identical in personnel and organization to the National Guard of the various states but could be ordered into federal service by the president whenever Congress declared a national emergency.

Armed Forces Reserve Act of 1952 - Gave authority to place Guardsmen on active duty training status for as many as fifteen days annually. This required, however, the consent of the state's governor.

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SECURITY CLASSIFICATION OF THIS PAGE *(When Data Entered)*

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1. REPORT NUMBER: ACN 87005	2. GOVT ACCESSION NO: AD-A182616
	3. RECIPIENT'S CATALOG NUMBER
4. TITLE *(and Subtitle)*: The Militia's Role in National Defense: A Historical Perspective	5. TYPE OF REPORT & PERIOD COVERED: Final Report
	6. PERFORMING ORG. REPORT NUMBER
7. AUTHOR(s): Major Samuel J. Newland	8. CONTRACT OR GRANT NUMBER(s)
9. PERFORMING ORGANIZATION NAME AND ADDRESS: Strategic Studies Institute, US Army War College, Carlisle Barracks, PA 17013	10. PROGRAM ELEMENT, PROJECT, TASK AREA & WORK UNIT NUMBERS
11. CONTROLLING OFFICE NAME AND ADDRESS	12. REPORT DATE: 15 May 1987
	13. NUMBER OF PAGES: 46
14. MONITORING AGENCY NAME & ADDRESS*(if different from Controlling Office)*	15. SECURITY CLASS. *(of this report)*: Unclassified
	15a. DECLASSIFICATION DOWNGRADING SCHEDULE

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17. DISTRIBUTION STATEMENT *(of the abstract entered in Block 20, if different from Report)*

18. SUPPLEMENTARY NOTES

19. KEY WORDS *(Continue on reverse side if necessary and identify by block number)*

National Guard, Militia, Reserve Component Training, National Guard in Honduras

20. ABSTRACT *(Continue on reverse side if necessary and identify by block number)*

In this study the author outlines the gradual extension of Congressional authority over the militia and later National Guard. While noting that there were attempts to assert Congressional authority as early as 1792, it was not until the passage of the Dick Act in 1903 that Congress began setting standards for the National Guard. Since that time there has been a slow but continual effort by Congress to set standards for the Guard and to provide funds and equipment for Guard units. The author concludes that there is a definite historical trend for more Congressional control over the Guard and its training

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20. Abstract (continued)

and that Congress is unlikely to retreat from its practice of extending its authority over Guard training.

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